

## **IC 23-1-49**

### **Chapter 49. Certificate of Authority of Foreign Corporations**

#### **IC 23-1-49-1**

##### **Necessity of certificate of authority; transacting business**

Sec. 1. (a) A foreign corporation may not transact business in Indiana until it obtains a certificate of authority from the secretary of state. However, this requirement does not apply to the following:

- (1) Banks.
- (2) Savings banks.
- (3) Savings associations.
- (4) Corporate fiduciaries.
- (5) Credit unions.
- (6) Industrial loan and investment companies.
- (7) Surety companies.
- (8) Trust companies.
- (9) Safe deposit companies.
- (10) Railroad corporations.
- (11) Insurance companies.
- (12) Building and loan associations.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) or within the meaning of IC 27-1-17-1 or IC 28-1-22-1:

- (1) Maintaining, defending, or settling any proceeding.
- (2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.
- (3) Maintaining bank accounts.
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities.
- (5) Selling through independent contractors.
- (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside Indiana before they become contracts.
- (7) Making loans or otherwise creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
- (8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
- (9) Owning, without more, real or personal property.
- (10) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature.
- (11) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) is not exhaustive.

*As added by P.L.149-1986, SEC.33. Amended by P.L.107-1987, SEC.24; P.L.145-1988, SEC.7; P.L.171-1996, SEC.1.*

### **IC 23-1-49-2**

#### **Transacting business without certificate of authority**

Sec. 2. (a) A foreign corporation transacting business in Indiana without a certificate of authority may not maintain a proceeding in any court in Indiana until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in Indiana without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in Indiana until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of not more than ten thousand dollars (\$10,000) if it transacts business in Indiana without a certificate of authority. The attorney general may collect all penalties due under this subsection.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in Indiana.

*As added by P.L.149-1986, SEC.33.*

### **IC 23-1-49-3**

#### **Application for certificate; contents; certificate of existence from foreign state or country**

Sec. 3. (a) A foreign corporation may apply for a certificate of authority to transact business in Indiana by delivering an application to the secretary of state for filing. The application must set forth:

- (1) the name of the foreign corporation or, if its name is unavailable for use in Indiana, a corporate name that satisfies the requirements of section 6 of this chapter;
- (2) the name of the state or country under whose law it is incorporated;
- (3) its date of incorporation and period of duration;
- (4) the street address of its principal office;
- (5) the address of its registered office in Indiana and the name of its registered agent at that office; and
- (6) the names and usual business addresses of its current directors and officers.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated.

*As added by P.L.149-1986, SEC.33.*

#### **IC 23-1-49-4**

##### **Amended certificate of authority**

Sec. 4. (a) A foreign corporation authorized to transact business in Indiana must obtain an amended certificate of authority from the secretary of state if it changes:

- (1) its corporate name;
- (2) the period of its duration; or
- (3) the state or country of its incorporation.

(b) The requirements of section 3 of this chapter for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

*As added by P.L.149-1986, SEC.33.*

#### **IC 23-1-49-5**

##### **Rights under certificate of authority**

Sec. 5. (a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in Indiana subject, however, to the right of the state to revoke the certificate as provided in this article.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this article is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) This article does not authorize Indiana to regulate the organization or internal affairs of a foreign corporation authorized to transact business in Indiana.

*As added by P.L.149-1986, SEC.33.*

#### **IC 23-1-49-6**

##### **Corporate name**

Sec. 6. (a) If the corporate name of a foreign corporation does not satisfy the requirements of IC 23-1-23-1, the foreign corporation, to obtain or maintain a certificate of authority to transact business in Indiana:

- (1) may add the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", to its corporate name for use in Indiana; or
- (2) may use a fictitious name to transact business in Indiana if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d), the corporate name (including a fictitious name) of a foreign corporation must be distinguishable upon the records of the secretary of state from:

- (1) the corporate name of a corporation incorporated or authorized to transact business in Indiana;
- (2) a corporate name reserved or registered under IC 23-1-23-2 or IC 23-1-23-3;
- (3) the fictitious name of another foreign corporation authorized

to transact business in Indiana; and

(4) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in Indiana.

(c) A foreign corporation may apply to the secretary of state for authorization to use in Indiana the name of another corporation (incorporated or authorized to transact business in Indiana) that is not distinguishable upon the secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if:

(1) the other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(2) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in Indiana.

(d) A foreign corporation may use in Indiana the name (including the fictitious name) of another domestic or foreign corporation that is used in Indiana if the other corporation is incorporated or authorized to transact business in Indiana and the foreign corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation;  
or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in Indiana changes its corporate name to one that does not satisfy the requirements of IC 23-1-23-1, it may not transact business in Indiana under the changed name until it adopts a name satisfying the requirements of IC 23-1-23-1 and obtains an amended certificate of authority under section 4 of this chapter.

*As added by P.L.149-1986, SEC.33.*

#### **IC 23-1-49-7**

##### **Registered office and registered agent**

Sec. 7. Each foreign corporation authorized to transact business in Indiana must continuously maintain in Indiana:

(1) a registered office; and

(2) a registered agent, who may be:

(A) an individual who resides in Indiana and whose business office is identical with the registered office;

(B) a domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(C) a foreign corporation or foreign not-for-profit corporation authorized to transact business in Indiana whose business office is identical with the registered office.

*As added by P.L.149-1986, SEC.33.*

#### **IC 23-1-49-8**

##### **Change in registered office or registered agent**

Sec. 8. (a) A foreign corporation authorized to transact business in Indiana may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

- (1) its name;
- (2) the street address of its current registered office;
- (3) if the current registered office is to be changed, the street address of its new registered office;
- (4) the name of its current registered agent;
- (5) if the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent or a representation that the new registered agent has consented (either on the statement or attached to it) to the appointment; and
- (6) that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign corporation that the registered agent serves by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

*As added by P.L.149-1986, SEC.33. Amended by P.L.107-1987, SEC.25.*

#### **IC 23-1-49-9**

##### **Resignation of registered agent**

Sec. 9. (a) The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the secretary of state for filing as described in IC 23-1-18 a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the secretary of state shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The secretary of state shall mail one (1) copy to the foreign corporation at its principal office address shown in its most recent annual report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

*As added by P.L.149-1986, SEC.33. Amended by P.L.228-1995, SEC.10.*

**IC 23-1-49-10****Service of process or notice on foreign corporation**

Sec. 10. (a) The registered agent of a foreign corporation authorized to transact business in Indiana is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation or other executive officer, as that term is used in Trial Rule 4.6(A)(1), at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation:

- (1) has no registered agent or its registered agent cannot with reasonable diligence be served;
- (2) has withdrawn from transacting business in Indiana under IC 23-1-50; or
- (3) has had its certificate of authority revoked under IC 23-1-51-2.

(c) Service is perfected under subsection (b) at the earliest of:

- (1) the date the foreign corporation receives the mail;
- (2) the date shown on the return receipt, if signed on behalf of the foreign corporation; or
- (3) five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

*As added by P.L.149-1986, SEC.33.*